

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

EDWARD BRANFORD GIBSON, et al., )  
)  
Plaintiffs, )  
)  
vs. )  
)  
FIELDSTONE MORTGAGE COMPANY, )  
et al., )  
)  
Defendants. )  
)

3:11-CV-0176-ECR (VPC)

## MINUTES OF THE COURT

December 5, 2011

PRESENT: THE HONORABLE VALERIE P. COOKE, U.S. MAGISTRATE JUDGE

DEPUTY CLERK: LISA MANN REPORTER: NONE APPEARING

COUNSEL FOR PETITIONER(S): NONE APPEARING

COUNSEL FOR RESPONDENT(S): NONE APPEARING

**MINUTE ORDER IN CHAMBERS:**

Before the court is plaintiffs' motion to add indispensable party and to extend time to amend (#21). Defendants filed a motion to strike plaintiff's motion to add indispensable party (#22) and opposed plaintiffs' motion to extend time to amend (#23). Plaintiffs opposed the motion to strike (#24) and filed a reply in support of their motion to add indispensable party (#25). Defendants replied in support of their motion to strike (#27).

On October 12, 2011, the District Court entered an order granting defendants' motion to dismiss plaintiffs' complaint (#17). The court dismissed several of plaintiffs' claims with prejudice, but granted leave to amend the first, second, sixth, seventh, eighth, and tenth claims for relief and gave plaintiffs until November 2, 2011, to file an amended complaint. *Id.* Plaintiffs did not do so; instead, they filed the motion to add indispensable party, along with the request for an extension of time to file an amended complaint.

Since the District Court dismissed plaintiffs' complaint, there is no operative complaint on file with the Clerk of Court. The plaintiffs cannot seek leave to add a party to a complaint that does not exist. Defendants cannot evaluate whether the proposed indispensable party is a proper party until they are able to review an amended complaint. The District Court already gave plaintiffs a deadline to file an amended complaint, which has passed. This Court will grant plaintiffs one final extension to file the amended complaint.

Based upon the foregoing, and good cause appearing, plaintiffs' motion to add indispensable party (#21) is **DENIED without prejudice**. In light of this ruling, defendants' motion to strike (#22) is **DENIED as moot**. Plaintiffs' motion for an extension to file an amended complaint (#21) is **GRANTED**. Plaintiffs shall file an amended complaint on or before **Monday, December 12, 2011**. Should plaintiffs refile their motion to add indispensable party, defendants shall have leave to file an opposition pursuant to Local Rule 7-2, having the benefit of the amended complaint and that motion.

**IT IS SO ORDERED.**

LANCE S. WILSON, CLERK

By:                     /s/                      
Deputy Clerk